

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

IN RE YASMIN® AND YAZ®	)	3:09-md-02100-DRH-CJP
(DROSPIRENONE) MARKETING,	)	
SALES PRACTICE AND PRODUCTS	)	
LIABILITY LITIGATION	)	Honorable David R. Herndon
	)	
	)	

**SUPPLEMENTAL MOTION TO APPOINT INTERIM LIAISON COUNSEL FOR  
PLAINTIFFS AND RESPONSE TO RELATED MOTIONS**

Comes now Schlichter, Bogard and Denton (“Schlichter Firm”) and in support of this motion states:

1. Appointment of interim counsel on behalf of all plaintiffs and the various firms that represent them in this MDL is an important first step in the coordination of this litigation. Interim appointment of liaison counsel is recognized in the *Manual for Complex Litigation* as a procedure that this Court can implement so that interim organization of the plaintiffs’ group is created until this Court has the opportunity to consider its decision on the permanent structure of the Plaintiffs Steering Committee (“PSC”). See *Manual for Complex Litigation (Fourth)* § 10.221, p. 49.

2. On October 6, 2009 the Schlichter Firm filed a Motion in the first filed Yasmin/Yaz products liability case requesting appointment of interim liaison counsel<sup>1</sup> and also filed the identical motion in the MDL proceeding.<sup>2</sup> However, it is unclear

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<sup>1</sup> See Motion of Schlichter Bogard & Denton, LLP for Appointment of Interim Liaison Counsel for the Plaintiffs in the Yaz/Yasmin MDL 2100 filed in *Hill v. Bayer Corporation et al.* 3:09-cv-10001-DRH-CJP Document No. 41.

<sup>2</sup> See Motion of Schlichter Bogard & Denton, LLP for Appointment of Interim Liaison Counsel for the Plaintiffs in the Yaz/Yasmin, In Re: Yaz/Yasmin (Drospirenone) Marketing, Sales Practice and Products Liability Litigation, MDL Docket No. 2100.

whether this motion was actually filed by the Clerk in the MDL proceeding, because the electronic filing system may not have been available for the MDL at that time.<sup>3</sup> Therefore, to make the MDL record complete and to ensure that all interested parties are aware of this request for appointment of interim liaison counsel, this supplemental motion is now being filed in the Yaz/Yasmin (Drospirenone) Marketing, Sales Practice and Products Liability Litigation MDL.

3. This request by the Schlichter Firm has drawn two separate responses. On October 12, 2009, Carey & Danis, L.L.C. filed a pleading, in which two other firms signed and several other firms were listed as “affiliated counsel” (“Carey and Danis Group”) suggesting that it was “premature” and urging the Court to wait until it has an initial status conference to appoint interim liaison counsel. The second response came from Onder, Shelton, O’Leary & Peterson, LLC (“Onder Firm”), which clearly supports the need for interim liaison counsel and further stated that the Schlichter Firm was qualified to serve in this role, but additionally suggested that Mr. Mark Niemeyer be appointed as “co-liaison counsel.”

4. The purpose of interim liaison counsel is to coordinate the plaintiffs’ group into a coordinated voice so that discussion can be had in an organized manner with defense counsel, various plaintiffs’ counsel, as well as taking the responsibility for disseminating information from the Court to all plaintiffs’ counsel. Waiting until the Court has an initial status conference, as suggested by the Carey and Danis Group, would not allow meaningful discussions with defense counsel which are commonly held before the status conference to set agenda items, to discuss the possibility of any protective orders, and to discuss related administrative matters because defense counsel

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<sup>3</sup> The MDL docket does not currently contain the original motion that was filed.

would not know who had authority to temporarily speak on behalf of the various plaintiffs. Until this Court has an opportunity to consider which procedures it will implement to make a decision on a permanent PSC, use of interim liaison counsel is an appropriate manner to temporarily organize the plaintiffs and to avoid a process in which the Court is inundated with pleadings from uncoordinated counsel. Because the very purpose of this appointment on an interim basis is to bridge the time from the present to the point when a permanent decision is made by this Court, it is certainly not “premature” for the Court to appoint interim liaison counsel.

5. The motion filed by the Onder Firm recognizes the need for interim liaison counsel, but requests a “co-liaison counsel” position. However, the appointment of two interim liaison counsels is not an efficient structure in this case for managing this multidistrict litigation because it would not allow for complete organization and communication with defense counsel regarding preliminary matters. In complex litigation involving firms across the country, it is important that during these preliminary stages of organization that there be a single voice with authority to meet and confer with plaintiffs’ counsel and then to communicate with defense counsel concerning case administration and to communicate with this Court until a status conference is held. A dual appointment of interim liaison counsel would likely create confusion and inefficiency in the communication structure. The appointment of a single interim liaison counsel is essential to coordination, scheduling, and efficiency, all of which are purposes served by an MDL proceeding. This is especially true here, where, as the Court can see from the list of firms already coordinated by undersigned counsel, a significant amount of communications and coordination has already been done.

6. The Carey and Danis Group also argue that their cases represent a “plurality of cases” so far filed in the MDL.<sup>4</sup> In fact, there is a much larger number of clients-estimated at over 1,500-represented by the Schlichter Firm and the law firms listed, *supra*, who support the motion for appointment of the Schlichter Firm as interim counsel. These firms each represent Yaz/Yasmin clients and are engaged in a prudent screening process before filing.

7. Moreover, the Schlichter Firm and its members have significant experience as counsel in other similar MDL cases involving defective drugs. *In re: NuvaRing Product Liability Litigation*, 4:08 MDL 1964 RWS (E.D. Mo)(liaison and co-lead counsel); *In re: Ortho Evra Products Liability Litigation*, 1:06-4000 MDL 1742 DAK (N.D. Ohio).

8. Furthermore, within the last two years, the Schlichter Firm has been appointed sole lead counsel in nine national class actions and co-lead counsel in another on behalf of hundreds of thousands of plaintiffs involving Fortune 500 defendants, with some of these national class actions pending in this Court. *Spano v. The Boeing Co.*, No. 06-cv-0743-DHR, Doc. 193 (S.D. Ill. Sept. 29, 2008); *Beesley v. International Paper Co.*, No. 06-cv-00703-DRH, Doc. 240 (S.D.Ill. Sept. 30, 2008); *Abbott v. Lockheed Martin Corp.*, No. 06-cv-701-MJR, Doc. 239 (S.D. Ill. Apr. 3, 2009); *Kanawi v. Bechtel Corp.*, 254 F.R.D. 102 (N.D. Cal. 2008)(Judge Charles R. Breyer); *Tussey v. ABB Inc.*, No. 06-cv-04305, 2007 WL 4289694 (W.D. Mo. Dec. 3, 2007, pet’n for appeal denied, No. 07-8023, 8th Cir., Feb. 5, 2008)(Judge Nanette K. Laughrey); *Loomis v. Exelon Corp.*, No. 06-cv-0900 (N.D. Ill. June 26, 2007)(Judge John W.

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<sup>4</sup> In their Motion, Carey & Danis list forty-five clients with file numbers, along with others without file numbers. Not one of the listed cases includes a plaintiff who resides within the Southern District of Illinois.

Darrah); *George v. Kraft Foods Global, Inc.*, 251 F.R.D. 338 (N.D. Ill. 2008)(Magistrate Judge Sidney I. Schenkier); *Taylor v. United Technologies Corp.*, No. 3:06-cv-1494 (D.Conn. June 2, 2008)(Judge Warren W. Eginton); and *Tibble v. Edison Int'l.*, No. 07-5359, Doc. 286 (C.D. Cal. June 30, 2009)(Judge Stephen V. Wilson); *Walker, et al., v. Monsanto et al.*, No. 04-cv-436-JPG Doc. 276 (S.D. Ill. May 22, 2008)(co-lead counsel).<sup>5</sup> Moreover, the firm's work on major class actions has been noted by this Court:

The Honorable U.S. District Judge James Foreman of this District stated of Mr. Schlichter's efforts in a class action involving a group of African American job applicants:

This Court is unaware of any comparable achievement of public good by a private lawyer in the face of such obstacles and enormous demand of resources and finance.

Order on Attorney's Fees, *Mister v. Illinois Central Gulf R.R.*, Case NO. 81-3006 (S.D.Ill. 1993). The Honorable Judge David R. Herndon wrote, regarding the firm's results in *Wilfong*, a case involving a nationwide class action on behalf of women:

Class counsel [Jerome J. Schlichter] has appeared in this court and has been known to this Court for approximately 20 years. This Court finds that Mr. Schlichter's experience, reputation and ability are of the highest caliber. Mr. Schlichter is known well to the District Court Judge and this Court agrees with Judge Foreman's review of Mr. Schlichter's experience, reputation and ability.

Order on Attorney's Fees, *Wilfong v. Rent-A-Center*, No. 0068-DRH (S.D. Ill. 2002).

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<sup>5</sup> Counsel is aware of this Court's instruction regarding avoiding citations to other U.S. District Court cases as authority for a particular proposition of law. These citations are not cited as binding precedent on this Court, but as a reference to District Court cases in which Schlichter, Bogard & Denton has been appointed lead class counsel.

9. Neither the Carey and Danis Group, nor the Onder Firm challenges the qualifications of the Schlichter Firm to act as interim liaison counsel.

10. Furthermore, the Schlichter Firm has the support and consent of the following 35 firms, who together with the Schlichter Firm's clients collectively represent over 1,500 Yaz/Yasmin clients, (Declaration of Kristine Kraft, Exhibit A) to act as interim liaison counsel for the PSC:

Mike Burg Janet Abaray Seth A. Katz Calvin Tregre Burg, Simpson, Eldredge, Hersh, & Jardine, P.C. 40 Inverness Drive Englewood, CO 80112	Michael A. London Gary Douglas Douglas & London, P.C. 111 John Street, Suite 1400 New York, NY 10038
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Jerrold S. Parker Andy Alonso Parker Waichman Alonso LLP 3301 Bonita Beach Rd. Bonita Springs, FL 34134	Daniel E. Becnel, Jr. Becnel Law Firm, L.L.C P.O. Drawer H 106 W. 7 <sup>th</sup> Street Reserve, LA 70084
Gregory N. McEwen McEwen Law Firm Ltd. 5850 Blackshire Path Inver Grove Heights, MN 55076	Carmen Sessions Scott Motley Rice L.L.C 28 Bridgeside Blvd. P.O. Box 1792 Mount Pleasant, SC 29465

<p>Trent Miracle  Simmons Browder Gianaris Angelides &amp;  Barnard L.L.C  707 Berkshire Blvd.  East Alton, IL 62024</p>	<p>Jayne Conroy  Paul J. Hanly, Jr.  Hanly Conroy Bierstein Sheridan Fisher &amp;  Hayes, LLP  112 Madison Avenue  New York, NY 10016</p>
<p>Elizabeth Dudley  Hutton &amp; Hutton Law Firm L.L.C  P.O. Box 638  Wichita, KS 67201</p>	<p>Barry Hill and Sol Weiss  Anapol Schwartz Weiss Cohan Feldman  Smalley, P.C.  89 12<sup>th</sup> Street  Wheeling, WV 26003</p>
<p>Brian Nettles  Nettles Law Firm  1389 Galleria Drive, Suite 110  Henderson, NV 89014</p>	<p>Gerald B. Taylor, Jr.  Paul Sizemore  Sizemore Taylor, LLP  316 Magnolia Avenue  Fairhope, AL 36532</p>
<p>Gancedo &amp; Nieves, L.L.C  144 West Colorado Blvd.  Pasadena, CA 91105</p>	<p>Steven M. Goldberg  Steven M. Goldberg Co., L.P.A.  34055 Solon Road, Suite 103  Solon, OH 44139</p>
<p>Alex Alvarez  The Alvarez Law Firm  355 Palermo Ave  Coral Gables, Florida 33134</p>	<p>Mike Maxwell  Bernard Law Group, P.L.L.C  900 Aurora Avenue North, Suite 100  Seattle, WA 98109</p>

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Wherefore, for the foregoing reasons, it is respectfully suggested that it is appropriate for this Court to appoint Schlichter, Bogard & Denton as interim liaison counsel for plaintiffs until a status conference herein is set.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of October, 2009 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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